

**DECLARATION AND POWER OF  
ATTORNEY ORIGINAL PATENT APPLICATION**

As a below named inventor, I hereby declare that:

**Type of Application**

This declaration is for the following type application:

<u>  X  </u>	Original
<u>     </u>	National Stage of PCT
<u>     </u>	Supplemental
<u>     </u>	Divisional
<u>     </u>	Continuation

**Inventorship Identification**

My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**INTRALUMINAL RADIATION TREATMENT SYSTEM**

**Specification Identification**

The specification of which:

       is attached hereto.

  X   was filed on September 23, 1997 as Application Serial No. 08/936,058 and was amended on        (if applicable).

       was described and claimed in PCT International Application No.        filed on        and as amended under PCT Article 19 on        (if any).

## Acknowledgement of Review of Papers and Duty of Candor

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56, which provides:

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner described by §§ 1.97 (b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine; (1) prior art cited in search reports of a foreign patent office in a counterpart application, and (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) refutes, or is inconsistent with, a position the applicant takes in:

(i) opposing an argument of unpatentability relied on by the Office, or

(ii) asserting an argument of patentability. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) each inventor named in the application;

(2) each attorney or agent who prepares or prosecutes the application; and

(3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

\_\_\_\_\_ In compliance with this duty there is attached an information disclosure statement, 37 CFR 1.97.

As to inventions disclosed in this application, but not disclosed in applications serial nos. 60/026,566, 60/041,090, and 60/052,708, I do not know and do not believe that the invention was ever known or used in the United States of America before my or our invention thereof; I do not know and do not believe that the invention was ever patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application; I do not know and do not believe that the invention was in public use or on sale in the United States of America more than one year prior to this application; and the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application.

As to inventions disclosed in serial no. 60/052,708, but not in serial nos. 60/026,566 and 60/041,090, I do not know and do not believe that the invention was ever known or used in the United States of America before my or our invention thereof; I do not know and do not believe that the invention was ever patented or described in any printed publication in any country before my or

our invention therefor or more than one year prior to July 16, 1997; I do not know and do not believe that the invention was in public use or on sale in the United States of America more than one year prior to July 16, 1997; and the invention has not been patented or made the subject of an inventor's certificate issued before July 16, 1997 in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to July 16, 1997.

As to inventions disclosed in serial no. 60/041,090, but not in serial no. 60/052,708, I do not know and do not believe that the invention was ever known or used in the United States of America before my or our invention thereof; I do not know and do not believe that the invention was ever patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to March 14, 1997; I do not know and do not believe that the invention was in public use or on sale in the United States of America more than one year prior to March 14, 1997; and the invention has not been patented or made the subject of an inventor's certificate issued before March 14, 1997 in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to March 14, 1997.

As to inventions disclosed in serial no. 60/026, 566, I do not know and do not believe that the invention was ever known or used in the United States of America before my or our invention thereof; I do not know and do not believe that the invention was ever patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to September 23, 1996; I do not know and do not believe that the invention was in public use or on sale in the United States of America more than one year prior to September 23, 1997; and the invention has not been patented or made the subject of an inventor's certificate issued before September 23, 1996 in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to September 23, 1996.

#### **Claim of Benefit of Provisional Application**

I hereby claim priority benefits under Title 35, United States Code, § 119(e) of any provisional application(s) for patent.

\_\_\_\_ No such applications have been filed.

  X   Such applications have been filed as follows.

Country	Application Number	Date of Filing (Month/Day/Year)	Priority Claimed	
			Yes	No
US	60/026,566	September 23, 1996	X	
US	60/041,090	March 14, 1997	X	
US	60/052,708	July 16, 1997	X	

#### Power of Attorney

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

Gary W. McFarron, Reg. 27,357

Stephen B. Heller, Reg. 30,181

Send correspondence to:

Direct telephone calls to:

Gary W. McFarron  
Stephen B. Heller  
COOK, MCFARRON & MANZO, LTD.  
135 S. LaSalle Street  
Suite 4100  
Chicago, IL 60603

Gary W. McFarron  
Stephen B. Heller  
(312) 236-8500

#### Declaration

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of  
Inventor: Raphael F. Meloul  
Residence Atlanta, GA  
Citizenship United States  
Post Office Address 1545 Beechcliff Drive, Atlanta, GA 30329  
Inventor's Signature Raphael F. Meloul Date 12-18-97

Full Name of  
Inventor: Richard A. Hillstead  
Residence Duluth, GA  
Citizenship United States  
Post Office Address <sup>3495</sup>  
~~3845~~ Leaf Land Court, Duluth, GA <sup>30097</sup>  
~~30136~~  
Inventor's Signature Richard A. Hillstead Date 12/18/97

Full Name of  
Inventor: George K. Bonnoit Jr.  
Residence Tucker, GA  
Citizenship United States  
Post Office Address 3958 Oberlin Court, Tucker, GA 30084  
Inventor's Signature George K. Bonnoit Jr. Date 1/16/98

Full Name of  
Inventor: Martin B. Tobias  
Residence ~~Longmont~~  
LONGMONT, CO  
Citizenship United States  
Post Office Address 1031 South Terry Street, ~~Longmont~~ <sup>LONGMONT</sup>, CO 80501  
Inventor's Signature Martin Tobias Date 1/23/98

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Raphael F. Meloul,  
Richard A. Hillstead, and  
George K. Bonnoitt, Jr.

Serial No.:

Filed: Herewith

For: INTRALUMINAL RADIATION  
TREATMENT SYSTEM

) "Express Mail" Mailing Label No. EL41170567345

) Date of Deposit November 19, 1999

) I hereby certify that this paper or fee is being  
deposited with the United States Postal Service  
) "Express Mail Post Office to Addressee" service  
) under 37 CFR 1.10 on the date indicated above  
) and is addressed to the Assistant Commissioner  
for Patents, Washington, D.C. 20231.

) Name Barry Moy  
(typed or printed)

Signature Barry Moy

VERIFIED STATEMENT CLAIMING SMALL ENTITY  
STATUS -- SMALL BUSINESS CONCERN

Honorable Commissioner of Patents & Trademarks  
Washington, D.C. 20231

Dear Examiner:

I hereby declare that I am:

\_\_\_ the owner of the small business concern identified below:

X an official of the small business concern empowered to  
act on behalf of the concern identified below:

NAME OF CONCERN Novoste Corporation

ADDRESS OF CONCERN 3890 Steve Reynolds Blvd., Norcross, GA 30090

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third-party or parties controls or has the power to control both.

I hereby declare that the exclusive rights under contract or law have been conveyed, to and remain with the small business concern identified above with regard to the invention, entitled:

Intraluminal Radiation Treatment System

by inventor(s): Raphael F. Meloul, Richard A. Hillstead, and

George K. Bonnoitt, Jr.

described in:

X the specification filed herewith.

       application serial no. 0 /           , filed           .

       patent no.           , issued           .

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small business entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Cheryl R. Johnson

TITLE OF PERSON OTHER THAN OWNER Vice President of Investor Relations

ADDRESS OF PERSON SIGNING 3890 Steve Reynolds - Norcross, GA 30093

SIGNATURE Cheryl R. Johnson Date 11-17-95